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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,332	09/17/2001	Nigel C. Phillips	02811-0151US	3254

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EXAMINER	
ANGELL, JON E	

ART UNIT	PAPER NUMBER
1635	

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/857,332	PHILLIPS ET AL.	
	Examiner	Art Unit	
	J. Eric Angell	1635	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires 6 months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.☒ The proposed amendment(s) will not be entered because:

(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ they raise the issue of new matter (see Note below);

(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: *See Continuation Sheet*.

3.☐ Applicant's reply has overcome the following rejection(s): _____.

4.☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6.☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.☒ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: *33-64*.

Claim(s) withdrawn from consideration: _____.

8.☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9.☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10.☐ Other: _____

Continuation of 2. NOTE: The proposed amendment would amend the claims such that the claims would be drawn to a method of treating cancer by administering at the cancer a compositions comprising a mycobacterial complex. New claims 65-68 indicate the routes of administration by whichc the therapeutic composition could be administered "at the composition, including subcutaneous, intradermal, subdermal, intraperitoneal, intraarticular, etc. Therefore, the proposed claim amendments would change the claims such that the claims would be drawn to a method of treating cancer by administering a therapeutic complex by any of several different types of administration in order to deliver the therapeutic composition "at the cancer". Each of these types of administration would require new considerations to determine if each of the possible administrations could deliver the therapeutic composition "at the cancer"..

Also, it is noted that in the interview of August 26, 2003 applicants were informed that amending the claims such that the claims were drawn to a method for treating cancer wherein the therapeutic composition was administered directly to the tumor would obviate the rejection. However, applicants have not so amended the claims. It is also repsectfully pointed out that the proposed claim amendment would add claims 65-68 which clearly indicate that the therapeutic composition could be administered "at the cancer" by many different routes of administration. Therefore, it is clear that the claims encompass deliverying the therapeutic composition "at the cancer" by administering the composition to the subject using any one of several different administration routes. These routes of administration each require new considerations. For instance, each proposed route of administration encompassed by claims 65-68 would have to e evaluated for its ability to deliver the therpaeutic composition "at the cancer".

DAVE T. NGUYEN
PRIMARY EXAMINER